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THE PROGRESS OF THE LAW

SUPREME COURT UPSETS STATE SEDITION ACTS

By a 6 to 3 decision the Supreme Court of the United States has held that the Federal Government has preempted the field of sedition laws so as to preclude enforcement of state laws on the same subject. In so holding, the court upheld the reversal by the Pennsylvania Supreme Court of a conviction of Steve Nelson, a communist party leader, who had been convicted of violating that state's anti-sedition law.

The majority opinion written by Chief Justice Warren emphasized the fact that federal interest is so dominant in the field of sedition that state laws on the same subject must fall. The three dissenting judges felt that the Supreme Court should not void state legislation without a clear mandate from Congress and that the Smith Act, which is the Federal Anti-Sedition Act, did not provide such a mandate.

In view of this decision, it is highly probable that the conviction of Carl Braden for violation of a Kentucky Anti-Sedition Act will be voided. In addition, the Anti-Sedition Laws of 42 states as well as Hawaii and Alaska will probably be invalidated.

NO OUSTER FOR USING FIFTH AMENDMENT

In the New York Law Forum for December, 1955, the case of Dr. Harry Slochower, a teacher at Brooklyn College who was discharged for pleading the Fifth Amendment before a Senate Committee, was reported. Dr. Slochower had refused to tell the sub-committee whether he had been a communist in 1940 and 41 and he was accordingly discharged under a provision of the New York City Charter which permitted dismissals of Municipal employees who refused to answer such questions.

Dr. Slochower instituted proceedings to obtain reinstatement and the United States Supreme Court on April 9, 1956, in a 5 to 4 ruling held that his "summary dismissal" violated due process of law.

The majority stated that "we must condemn the practice of imputing a sinister meeting to the exercise of a person's constitutional right under the Fifth Amendment . . . the privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a conviction of guilt or a conclusive presumption of the perjury."

Under this decision, Brooklyn College was ordered to reinstate Dr. Slochower. The College's president indicated, however, that he was again to be suspended on new charges of "untruthfulness and perjury." The effect of this decision on other dismissals remains to be seen. All told, 13 employees of the board of higher education and 17 staff members of the Board of Education have been discharged under the same sec-

tion of the New York City Charter and it is expected that many of these employees will seek to take advantage of the Slochower ruling.

GAMBLING AND NEGOTIABLE INSTRUMENTS

A NEW YORK business man who stopped payment on a check cashed in a Cuban night club is defending a law suit brought against him by the latter on the ground that it violates New York's laws against gambling. The defendant, Paul Milora, cashed a check for $3000.00 for that amount in gambling chips. He spent $50.00 for food and drinks, lost $2000.00 at the dice tables, and then cashed in the rest of his chips. Upon his arrival home, he stopped payment on his check.

The Cuban club brought suit against Mr. Milora in New York on the ground that, since gambling was legal in Cuba, it should be permitted to recover. If it is unsuccessful, it is highly problematical whether Cuban casinos would accept checks for gaming purposes in the future.

REDUCTION OF FEDERAL COURT BACKLOGS

HENRY P. CHANDLER, the retiring Director of the Administrative Office of the United States Courts has just announced that the Federal courts are beginning to reduce their backlog of cases on a nation-wide level. For the first time since 1951, the District Courts in 1955 disposed of more cases than were filed. In the Southern District of New York, one of the most congested, the courts disposed of 7162 civil cases, 1985 more than the previous year.

CONTINGENT FEES

EFFECTIVE January 1, 1957, a new schedule of contingent fees will go into effect in the First Department. Attorneys will be permitted to receive up to 50% on the first $1000 recovered; 40% on the next $2000; 35% on the next $22,000; 20% on the next $25,000, and 15% on any amount exceeding $50,000. The new rule, to be known as Rule 4, will only pertain to actions for personal injuries or wrongful death. Any fees in excess of these percentages, "shall constitute the exaction of unreasonable and unconscionable compensation."

Lawyers will be required to file after January 1, 1957 a closing statement with the clerk of the Appellate Division. This statement must include the disposition of the case, the gross amount of recovery, taxable costs and disbursements, itemized statements of liens, costs and expenses, the next amount of recovery and the amount of compensation actually received.

The reason behind the new rule is apparent in Presiding Justice David W. Peck's statement that when the contingent fee approaches the fifty per cent level, "it ceases

to be a measure of due compensation for professional services rendered and makes the lawyer a partner or proprietor in the lawsuit."

TELEVISING OF TRIALS

SOME months ago (Law Forum, January, 1956) the Progress of the Law reported the televising of a murder trial in Waco, Texas. This was the first time that a criminal trial had been televised. A second instance recently occurred in Indianapolis, Indiana, where the trial of Samuel J. Woodson for robbery and felonious assault was broadcast over WTTV. However, the defendant in this case was much more concerned about the televising than his Texas counterpart had been. Mr. Woodson, on his way to take the stand, rushed at the television camera, kicked it, and ripped out wires to a sound amplifier.

His attorney protested the televising of the trial claiming that his client's constitutional rights were being violated. However, the court took the opposite view and stated as follows: "I cannot control the newspapers and cameramen. We still have freedom of the press. This is an open court and as long as I am judge the public is going to know what is going on."

DEATH OF DEAN FINN

JOHN F. X. FINN, former Dean of Fordham Law School, died on September 8, 1956 at the age of fifty-six. Dean Finn had been a member of the faculty of Fordham Law School since 1924, becoming dean in 1954. He had resigned as dean a week before his death to become coordinator for the new Fordham Law Development Center on Lincoln Square.

Dean Finn had a long and varied career. He was a special lecturer at Yale Law School from 1950 to 1953, a special referee of the Supreme Court, New York County, a law examiner for the Municipal Civil Service Commission and a member of the New York State Law Revision Commission. He served in the United States Army during World War I and was a lieutenant in the United States Naval Reserve from 1931 to 1941. In addition, he was the author of many legal publications.

His death is not only a great loss to the legal profession, but to legal education as well.

TAVERN ON THE GREEN

ON MAY 2, 1956, Justice Samuel H. Hofstadter issued an injunction restraining the City from continuing work on the Tavern's parking lot in Central Park. Judge Hofstadter granted the injunction because he said that he felt it was his duty to intervene in any case where an ad-

ministrative officer—in this case, Robert Moses—may have exceeded his powers.

Park Commissioner Moses took the position that the City had the right to convert portions of Central Park for legitimate commercial purposes. He had been opposed by a group of mothers who had been using the park area, destined to become a parking lot, as a playground.

In his decision granting the injunction, Judge Hofstadter said that Central Park had been dedicated to the people of New York in perpetuity and "every attempted encroachment on its sacred domain has been stoutly resisted in the intervening years. The sound instinct of our people has preserved it inviolate for succeeding generations. Once nature has been ravished, she cannot be restored." He admitted that Mr. Moses had been assiduous in creating and preserving park areas but "the paradox arises because he has dealt with thousands of acres and he regards and treats this half acre de minimis but no foot or even inch of park space is expendible in our teeming metropolis."

Mr. Moses said that his department would pursue the matter to the highest court possible and that he intended to carry through with his intention to building the parking lot.

On June 5th, the Appellate Division, First Department, sustained the temporary injunction without deciding the merits of the controversy and the City announced that it would take an appeal to the Court of Appeals. However, Mr. Moses capitulated after this adverse ruling and abandoned his parking lot plans and returned the area to the children.

JELKE CONVICTION UPHELD

THE Court of Appeals recently upheld unanimously Minot F. Jelke's conviction for compulsory prostitution. Jelke is currently serving a two to three year sentence in Green Haven State Prison, in Stormville, New York.

Associate Judge Van Voorhis characterized Jelke as "no vice lord, but just a shallow and irresponsible youth" who was over-influenced by "the tinsel of New York City Cafe Society."

Jelke will become eligible for parol in August of this year.

SUSPENSION OF AMATEUR RUNNER UPHELD

LAST February the American Athletic Union decreed a lifetime suspension for Wes Santee, one of America's fastest milers. The reason for this suspension was that Santee allegedly demanded and received excessive expense accounts from promoters. Santee did not refute this allegation but appealed to the courts for reinstatement on technical grounds.

Recently Justice Walter A. Lynch of the Supreme Court, New York County, upheld his suspension. At

the same time Mr. Justice Lynch scored promoters who tempt amateurs with under-the-counter money. However, he found that Mr. Santee had willingly accepted sums far in excess of the A.A.U. Regulations.

SUPREME COURT AND PUBLIC TRANSPORTATION

ON APRIL 23, 1956, the United States Supreme Court refused to upset the lower court's rule that segregation on public transportation violated the United States Constitution. In so doing, it invalidated a South Carolina law requiring segregation of passengers on motor vehicles.

Twelve other Southern states have similar statutes. The court's decision is generally regarded as invalidating all such laws as well as and legally embalming the "separate but equal" doctrine of Plessy v. Ferguson.

The original suit was one for damages brought against a South Carolina bus company by Sarah Mae Flemming because a driver had forced her to leave the bus when she refused to move to a section reserved for negroes. She charged that the South Carolina statute requiring such segregation abridged her civil rights as guaranteed by the 14th Amendment. Her decision had been upheld by the lower federal courts.

SUMMER COURT SESSIONS

CHIEF Justice Albert Conway of the Court of Appeals has announced that the recently completed summer court sessions were a "significant success." These sessions were established at his request in order to relieve calendar congestion in the trial of personal injury and death actions.

In New York County, 2,320 cases were called from June 18 through June 29 to prepare for the summer session. This call resulted in 219 cases being settled or marked off the calendar. This was also true in much the same proportions in the other counties.

Judge Conway stated that "the results obtained by the summer sessions as indicated by these figures are noteworthy. It has been demonstrated that the business of the courts may continue during the summer months in a normal fashion and that cases can be disposed of and the backlog of pending cases reduced. The courts have ample reason to be proud of the accomplishments of the last two months."